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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JESUS MORA,

NO. 2:10-cv-2548 FCD

Plaintiff,

v.

ORDER

MORTGAGEIT, INC.; ONEWEST
BANK, F.S.B. DEUTSCHE BANK
NATIONAL TRUST COMPANY, AS
TRUSTEE OF THE INDYMAC INDX
MORTGAGE LOAN TRUST
2006-AR-14, MORTGAGE
PASSTHROUGH CERTIFICATES,
SERIES 2006-AR-14; AZTEC
FORECLOSURE CORPORATION;
TERENCE MICHAEL FLANNIGAN;
RANDOLPH BERKELEY MARTIN
d/b/a/ UNION FIDELITY
MORTGAGE; and DOES 1-20
inclusive,

Defendants.

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The court has reviewed defendant MortgageIT, Inc.'s amended
notice of removal to the United States District Court for the
Eastern District of California under 28 U.S.C. §§ 1441(b) based
on federal question jurisdiction. The court finds that the

1 underlying complaint, alleging causes of action for (1) fraud and
2 deceit, (2) negligent misrepresentation, (3) breach of fiduciary
3 duty, (4) aiding and abetting, (5) breach of contract, (6)
4 tortious interference with contractual relations, (7) negligence,
5 and (8) wrongful foreclosure does not present a federal question
6 and is therefore improperly before this court.

7 "The presence or absence of federal question jurisdiction is
8 governed by the 'well-pleaded complaint rule,' which provides
9 that federal jurisdiction exists only when a federal question is
10 presented on the face of the plaintiff's properly pleaded
11 complaint." Sacramento Metropolitan Air Quality Management Dist.
12 v. United States, 215 F.3d 1005, 1014 (9th Cir. 2000). Federal
13 jurisdiction may also lie if "it appears that some substantial
14 disputed question of federal law is a necessary element of one of
15 the well-pleaded state claims." Rains v. Criterion Sys., Inc.,
16 80 F.3d 339, 345 (9th Cir. 1996) (quoting Franchise Tax Bd. of
17 California v. Construction Laborers Vacation Trust for Southern
18 California, 463 U.S. 1, 13 (1983). However, "[w]hen a claim can
19 be supported by alternative and independent theories - one of
20 which is a state law theory and one of which is a federal law
21 theory - federal question jurisdiction does not attach because
22 federal law is not a necessary element of the claim." Id.
23 (holding that the plaintiff's wrongful discharge claim did not
24 give rise to federal question jurisdiction because it could be
25 supported by violations of the state law constitution, not only
26 violations of a federal statute); Lippit v. Raymond James Fin.
27 Servs., Inc., 340 F.3d 1033, 1043 (9th Cir. 2003) (holding that
28 California unfair competition law claims did not give rise to

1 federal question jurisdiction because such claims are based on
2 unfair or fraudulent conduct generally, and not necessarily
3 violations of federal rules and regulations); Mulcahey v.
4 Columbia Organic Chemicals, 29 F.3d 148. 153 (4th Cir. 1994)
5 (holding that negligence action alleging violations of local,
6 state, and federal environmental laws did not confer federal
7 question jurisdiction).

8 In this case, plaintiff's claims do not rely solely on
9 violations of federal law. Indeed, while defendant contends that
10 "[p]laintiff's claims should be characterized as federal claims
11 for relief," none of plaintiff's claims are brought pursuant to
12 or even reference federal law. As such, resolution of potential
13 federal issues is not essential, and thus, determination of
14 federal law is not a necessary element of one of the well-pleaded
15 state claims. See Christianson v. Colt Industries Operating
16 Corp., 486 U.S. 800, 810 (1988) ("[A] claim supported by
17 alternative theories in the complaint may not form the basis for
18 [federal] jurisdiction unless [federal] law is essential to each
19 of those theories.").

20 Accordingly, the court REMANDS this action back to the
21 Superior Court of California, County of Yolo.

22 IT IS SO ORDERED.

23 DATED: September 28, 2010



FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE